

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

July 29, 1997

UNITED STATES OF AMERICA	)	
Complainant,	)	8 U.S.C. § 1324a Proceeding
	)	
v.	)	OCAHO Case No. 97A00091
	)	
MODERN NECKWEAR COMPANY,	)	
INC.,	)	
Respondent.	)	

FINAL DECISION AND ORDER OF JUDGMENT BY DEFAULT

I. PROCEDURAL HISTORY

This is an action arising under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a, (INA) in which the United States Department of Justice, Immigration and Naturalization Service (INS) is the complainant and Modern Neckwear Company, Inc. (Modern Neckwear) is the respondent. On April 9, 1997, INS filed a complaint in three counts with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging in Count I that respondent failed to prepare and/or make available for inspection Employment Eligibility Verification Forms (Form I-9) for four named individuals hired after November 6, 1986. Count II alleges that respondent failed to ensure that twenty-four named individuals hired after November 6, 1986 properly completed Section 1 of Form I-9 and failed itself to properly complete Section 2 of Form I-9 for those individuals. In Count III, complainant alleges that respondent failed to properly complete Section 2 of Form I-9 for twenty-eight named individuals hired after November 6, 1986. For these violations of the INA, complainant seeks total civil money penalties in the amount of \$21,280.00.

On April 21, 1997, respondent's attorney, Alan D. Gelbstein, was served with the complaint, together with a Notice of Hearing, by certified mail, return receipt requested. No answer was filed in response. Complainant thereafter filed a Motion for Default Judgment on June 2, 1997, accompanied by a Declaration of Counsel. Respondent failed to submit a response to this motion as well. On June 6, 1997, I issued an Order to Show Cause why Default Judgment Should not Issue, advising respondent of the consequences of a failure to respond, and providing an opportunity for respondent to cure its default and to submit an answer. The order also provided an opportunity for comment on the issue of the civil penalty sought by complainant.

The Order specifically instructed respondent to show cause within 15 days why the Motion for Default Judgment should not be granted, or in the alternative, show good cause for its

prior failure to answer, and to file an answer comporting with 28 C.F.R. § 68.9, as well as to submit its comments on the issue of the civil penalty in writing within 15 days. No written response was made to this Order.

A representative of respondent company did make two telephone calls to my office on June 17, 1997, and again on June 26, 1997, indicating the attorney was not being responsive and requesting an extension of time in order to obtain further assistance in preparing a response. The caller was informed by members of my staff that, if the attorney was unresponsive, the respondent itself could submit a request for extension of time in letter format. The individual calling also stated during the second call that his attorney represented that he (the attorney) had spoken with the judge. No such conversation ever took place and any suggestion that it did is most improper.

No written response has been made to the Order to Show Cause and more than 30 days has elapsed since the last telephone call.

## II. APPLICABLE LAW

The OCAHO Rules of Practice and Procedure<sup>1</sup> provide that failure of a respondent to answer a complaint shall be deemed to constitute a waiver of its right to appear and contest the allegations of the complaint. 28 C.F.R. § 68.9(b). The administrative law judge may thereafter enter a judgment by default. Id.

The purpose of a default judgment both historically and in contemporary practice is to protect a diligent party from interminable delay caused by an essentially unresponsive party. See generally 10 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice & Procedure § 2681, at 401-02 (2d ed. 1990). That purpose is well served by a default judgment here. Inasmuch as respondent did not avail itself of the opportunity provided, I accept as true all the factual allegations of the complaint.

## III. FINDINGS, CONCLUSIONS, AND ORDER

I have considered the record in this case, on the basis of which I find and conclude that:

- A. Complainant's Motion for Default Judgment is granted.
- B. As alleged in the Complaint, respondent is in violation of 8 U.S.C. § 1324a(a)(1)(B) with respect to each employee named in the Complaint, as to whom respondent is found to have:
  - (1) failed to prepare and/or make available for inspection Employment Eligibility Verification Forms (Form I-9) for four named individuals hired after

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<sup>1</sup> Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1996).

November 6, 1986, at an assessment of \$480.00 for one individual and \$380.00 for each of three individuals and a total civil money penalty of \$1,620.00 (Count I);

- (2) failed to ensure that twenty-four named individuals hired after November 6, 1986 properly completed Section 1 of Form I-9 and failed itself to properly complete Section 2 of Form I-9 for these individuals, at an assessment of \$470.00 for each of six individuals and \$370.00 for each of eighteen individuals and a total civil money penalty of \$9,480.00 (Count II); and
- (3) failed to properly complete Section 2 of Form I-9 for twenty-eight named individuals hired after November 6, 1986, at an assessment of \$460.00 for one individual and \$360.00 for each of twenty-seven individuals and a total civil money penalty of \$10,180.00 (Count III).

C. Respondent shall pay a civil money penalty in the aggregate amount of \$21,280 for the violations listed in the Complaint.

SO ORDERED.

Dated and entered this 29th day of July, 1997.

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Ellen K. Thomas  
Administrative Law Judge

#### Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324a(e)(7) and (8), and 28 C.F.R. § 68.53.

## CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 1997, I served copies of the foregoing Final Decision and Order of Judgment By Default on the following persons at the addresses indicated:

Dea Carpenter, Esq.  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536-9999

Mimi Tsankov, Esq.  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536-9999

Modern Neckwear Company, Inc.  
129 West 27th Street  
New York, NY 10001-9999

Alan D. Gelbstein, Esq.  
1510 East 7th Street  
Brooklyn, NY 11230-9999

Office of the Chief Administrative Hearing Officer  
5107 Leesburg Pike, Suite 2519  
Falls Church, VA 22041

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Cynthia A. Castañeda  
Legal Technician to  
Ellen K. Thomas  
Administrative Law Judge  
5107 Leesburg Pike, Suite 1905  
Falls Church, VA 22041  
(703) 305-1742